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# NASA Policy Directive

**NPD 1050.1H**

Effective Date: November 29, 2006

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 (NASA Only)

## **Subject: Authority To Enter Into Space Act Agreements**

**Responsible Office: Office of the General Counsel**[NAII 1050-1 NASA Advisory Implementing Instruction, Space Act Agreements Guide.](#)

### **1. POLICY**

The National Aeronautics and Space Act of 1958 (herein, the Space Act), as amended (42 U.S.C. § 2451 et seq.), authorizes NASA "to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its work and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or with any political subdivision thereof, or with any person, firm, association, corporation, or educational institution" (emphasis added). In addition, the Space Act permits NASA to engage in international cooperative programs pursuant to the Agency's missions. Under its Space Act authority, NASA has entered into a great number of agreements with diverse groups of people and organizations, both in the private and public sector, in order to meet wide-ranging NASA mission and program requirements and objectives. It is NASA's policy to utilize the broad authority granted to the Agency in the Space Act to further the Agency's missions. Space Act Agreements (herein "Agreement(s)") entered into under the "other transaction" authority in the Space Act establish a set of legally enforceable promises between NASA and the other party to the Agreement (herein "Agreement Partner"). Such Agreements constitute commitments by the Agency of resources (including personnel, funding, services, equipment, expertise, information or facilities) to accomplish stated objectives of a joint undertaking with an Agreement Partner. The Agreement Partner can be a U.S. or foreign person or entity, an educational institution, a Federal, State, or local governmental unit, a foreign government, or an international organization.

The Space Act provides authority for Reimbursable, Nonreimbursable, and Funded Agreements. In this NPD, each type of Agreement is defined and differentiated by underlying principles, as follows, to ensure that each type of Agreement is effectively utilized and strategically managed:

a. Reimbursable Agreements are Agreements wherein NASA's costs associated with the undertaking are reimbursed by the Agreement Partner (in full or in part). NASA undertakes Reimbursable Agreements when it has unique goods, services, and facilities, not being fully utilized to accomplish mission needs, which it can make available to others on a noninterference basis, consistent with the Agency's missions. All Reimbursable Agreements are subject to the provisions of NASA financial management policy. Before a Reimbursable Agreement may be executed, a cost estimate (Estimated Price Report in accordance with Financial Management Requirements (FMR) Vol. 16) for the undertaking must be prepared and reviewed by the NASA Director, Headquarters Operations, (for Headquarters Agreements) or Center Chief Financial Officers (CFOs) (for Center Agreements). Before NASA may perform work for which NASA is to be reimbursed by an Agreement Partner, an amount sufficient to fund the reimbursable work must be received by the Agency, unless the Agreement is with another Federal agency, or as otherwise authorized in paragraph 1.f.(1) of this NPD. Additionally, before NASA may enter into a Reimbursable Agreement wherein NASA is to be reimbursed for less than the full cost of its activities performed under the Agreement, the official responsible for executing the Agreement (herein "Signing Official" in accordance with section 5.e of this NPD) must determine that the proposed contribution of the Agreement Partner is fair and reasonable compared to the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA. All domestic Reimbursable Agreements are governed by U.S. Federal law. International Reimbursable Agreements are governed by U.S. Federal law except in rare circumstances as determined by the Assistant Administrator for External Relations in consultation with the General Counsel.

b. Nonreimbursable Agreements involve NASA and one or more Agreement Partners in a mutually beneficial activity that furthers the Agency's missions, wherein each party bears the cost of its participation and there is no exchange of funds between the parties. Since Nonreimbursable Agreements involve the commitment of NASA resources, the respective contributions of each Agreement Partner must be fair and reasonable under the circumstances. Therefore, before NASA may enter into a Nonreimbursable Agreement, a cost estimate of the value of the NASA resources to be committed under the Agreement must be prepared so that the Signing Official has a basis for determining that the proposed contribution of the Agreement Partner is fair and reasonable compared to the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA. Nonreimbursable Agreements are governed by U.S. Federal law unless concluded under international law with a foreign government or instrumentality, a foreign agency, or an international organization.

c. Funded Agreements are Agreements under which appropriated funds are transferred to a domestic Agreement Partner to accomplish an Agency mission. Funded Agreements may be used only when the Agency objective cannot be accomplished through the use of a procurement contract, grant, or cooperative agreement. Before NASA may enter into a Funded Agreement, a cost estimate of the funding and, as appropriate, the value of any other NASA resources to be committed under the Agreement must be prepared and reviewed by the NASA CFO (for Headquarters Agreements) or Center CFOs (for Center Agreements) so that the Signing Official has a basis for determining that the proposed contribution of NASA is fair and reasonable compared to NASA program risks, corresponding benefits to NASA, and the funding and resources to be contributed by the Agreement Partner. All Funded Agreements are subject to U.S. Federal law.

d. International Agreements are Nonreimbursable Agreements or Reimbursable Agreements wherein the Agreement Partner is not a U.S. person or entity. International Nonreimbursable Agreements are generally governed by international law, while International Reimbursable Agreements are generally governed by U.S. Federal law. Regardless of the choice of governing law, however, NASA's performance of its responsibilities under any agreement is subject to applicable U.S. laws. The Case-Zablocki Act (1 U.S.C. § 112 (b)) provides certain procedural requirements for International Agreements with foreign governments or international organizations, when the International Agreement is significant, as that term is described in the regulations implementing the Case-Zablocki Act, 22 C.F.R. Part 181. Such procedural requirements include review by other parts of the U.S. Government coordinated through the Department of State. Agreements subject to the Case-Zablocki Act are governed by international law. Initiation, execution, and implementation of International Agreements must also comply with the requirements of NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs and NPD 2190.1, NASA Export Control Program.

e. All Agreements entered into under this NPD (except for Host-Tenant Agreements, Intergovernmental Personal Act Agreements, Travel-only Agreements, and "Pass-Thru" Agreements, as defined in FMR Vol. 16) must include, consistent with NASA Advisory Implementing Instruction 1050-1 (Space Act Agreement Guide), provisions specifying the following:

- (1) Respective responsibilities of NASA and the Agreement Partner, with the standard of performance based on a "reasonable efforts" basis.
- (2) Responsibilities or performance milestones that are stated with sufficient clarity to support preparation of cost estimates, sound management planning, and efficient Agreement administration.
- (3) Clearly defined financial commitments, including a statement that NASA's performance of the Agreement is subject to the availability of appropriated funds and that no provision of the Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Title 31 U.S.C. § 1341.
- (4) Resource commitments providing that NASA usage of facilities, equipment, and personnel shall have priority over the usage planned in the Agreement.
- (5) Allocation of risk between NASA and the Agreement Partner.
- (6) Allocation of intellectual property rights implicated by or created under the Agreement.
- (7) Termination rights and obligations.
- (8) A fixed expiration date for the Agreement based either on a date certain or upon completion of the obligations under the Agreement, whichever occurs first.

f. Written waivers from the recommended approach in the Space Act Agreement Guide are required under the following circumstances:

- (1) Where a non-Federal party demonstrates a financial hardship or legal restriction prohibiting advance payments and is requesting that reimbursable work commence in advance of the receipt of funds by NASA, a waiver must be approved by the NASA CFO (for Headquarters Agreements) or Center CFOs (for Center Agreements). Such a waiver may only be approved if the work is of a type that NASA could properly fund on its own and funds are certified and allocated to account for costs that may accrue prior to the provision of funds by the non-Federal party.

(2) Where insurance is not required for high-risk activities and the work to be performed is primarily for the benefit of the Agreement Partner, a waiver must be recommended by the Project Manager or other responsible official, reviewed by the Office of the General Counsel (for Headquarters Agreements) or the Center Chief Counsel (for Center Agreements), and approved by the Signing Official.

## 2. APPLICABILITY

This NPD applies to NASA Headquarters and NASA Centers, including Component Facilities.

## 3. AUTHORITY

42 U.S.C. § 2473(c), 42 U.S.C. § 2475, sections 203(c) and 205 of the National Aeronautics and Space Act of 1958, as amended.

## 4. REFERENCES

- a. 1 U.S.C. § 112(b) - The Case-Zablocki Act.
- b. 31 U.S.C. § 6301, et seq. - Federal Grants and Cooperative Agreements Act of 1977.
- c. 42 U.S.C. § 2459b, Misuse of Agency Name and Initials.
- d. 14 CFR Part 1204.501, Delegation to Take Actions in Real Estate and Related Matters.
- e. 14 CFR Subpart 1221.1, NASA Seal, NASA Insignia, NASA Logotype, NASA Program Identifiers, NASA Flags, and the Agency's Unified Visual Communications System.
- f. 14 CFR Subpart 1245.1, Patent Waiver Regulations.
- g. 14 CFR Part 1260, Grants and Cooperative Agreements.
- h. 14 CFR Part 1274, Cooperative Agreements with Commercial Firms.
- i. 48 CFR Subpart 1817.5 citing Subpart 1817.70, Interagency Acquisitions.
- j. NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs.
- k. NPD 2190.1, NASA Export Control Program.
- l. NPR 5800.1, Grant and Cooperative Agreement Handbook.
- m. [NAII 1050-1 NASA Advisory Implementing Instruction, Space Act Agreements Guide](#).
- n. NASA Financial Management Requirements Vol. 16, Reimbursable Agreements.

## 5. RESPONSIBILITY

- a. The Mission Directorate Associate Administrators, the Officials-in-Charge of Headquarters Offices, the Directors of NASA Centers, and the Manager of the NASA Management Office-Jet Propulsion Laboratory (NMO-JPL), within their areas of jurisdiction, are responsible for the negotiation, execution, amendment, and termination of Reimbursable (except for International Agreements), Nonreimbursable (except International Agreements), and Funded Agreements, for the selection of Agreement Managers (except International Agreements), for ensuring that the Space Act Agreement Maker (SAAM) is used to initiate and review Agreements to the maximum extent practicable, and for ensuring that SAAM is used to store all Agreements (except International Agreements).
- b. The NASA CFO and the Center CFOs are responsible for developing policies and procedures consistent with the Agency's fiscal systems and Federal regulations to ensure fiscal integrity in the Agency's utilization of Agreements. The Director, Headquarters Operations, (for Headquarters Agreements) or Center CFOs (for Center Agreements) will review all cost estimates prepared for any Reimbursable Agreement. The NASA CFO (for Headquarters Agreements) or Center CFOs (for Center Agreements) will review all cost estimates prepared for any Funded Agreement.
- c. The Assistant Administrator for External Relations is responsible for the negotiation, execution (which may include signature and a separate entry-into-force process), amendment, and termination of International Agreements; for the review of all Agreements with other U.S. Federal Agencies; for the selection of Agreement Managers for International Agreements; and for storing all Agreements within his/her jurisdiction.
- d. The NASA General Counsel (for Headquarters Agreements) or the Center Chief Counsel (for Center Agreements)

is responsible for reviewing all Agreements entered into under this NPD to ensure compliance with applicable statutes, regulations, and policies. The NASA General Counsel provides support to the Assistant Administrator for External Relations who is responsible for the negotiation, execution, amendment, and termination of International Agreements. All Funded Agreements will be provided for review to the NASA Office of General Counsel at Headquarters prior to execution.

e. As used in this NPD, "Signing Official" means a NASA employee delegated the responsibility to execute Agreements for the Agency. The Officials authorized, in paragraph 5.a herein, to execute Agreements may delegate the responsibility, in accordance with paragraph 5.g herein, to one or more Signing Officials. Each Signing Official is responsible for determining that each Agreement within his/her area of jurisdiction has been properly reviewed, consistent with this NPD. For Nonreimbursable Agreements and for Reimbursable Agreements wherein the Agreement Partner reimburses NASA for less than the full cost of NASA's activities under the Agreement, the Signing Official is responsible for determining that the Agreement Partner's contribution is fair and reasonable compared to the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA. For Funded Agreements, the Signing Official is responsible for determining that the proposed contribution of NASA is fair and reasonable compared to NASA program risks, corresponding benefits to NASA, and the funding and resources to be contributed by the Agreement Partner.

f. Agreement Managers are responsible for collecting information required to establish reasonable expectations of the parties for concluding the Agreement; managing the draft, review, and approval process of the Agreement; and facilitating the meeting of the established expectations. Information required to establish reasonable expectations of the parties includes data necessary to define each party's responsibilities and establish the terms and provisions of the Agreement (e.g., information referred to in the Space Act Agreements Guide questionnaire); identify the necessary NASA resources and funding; determine viability of the business case; and establish mutually agreed upon processing times for concluding the Agreement. The Agreement Manager must also identify and ensure timely involvement of the appropriate NASA offices in the review and approval process; maintain a system for tracking and documenting the time required for each phase of the review; and prepare an adequate review package for the Signing Official. Each Agreement Manager may act as a facilitator, negotiator, or both. For the Agency's recordkeeping requirements, Agreement Managers must maintain or be able to verify the location of all final, signed copies of Agreements under their jurisdiction. For International Agreements and Agreements with other U.S. Federal agencies, the Agreement Manager must provide a copy of the executed Agreement to the Assistant Administrator for External Relations.

g. The Officials authorized in paragraph 5.a. herein, to execute, amend, and terminate Agreements, may delegate their responsibility as follows: for Nonreimbursable Agreements (except International Agreements) and Reimbursable Agreements (except International Agreements), the authority to execute, amend, and terminate may be delegated to any NASA employee having management responsibility for projects or activities required to support the Agreement objectives. For International Agreements, the Assistant Administrator for External Relations may establish with the Mission Directorate Associate Administrators, the Officials-in-Charge of Headquarters Offices, the Center Directors, and the Manager of the NASA Management Office-Jet Propulsion Laboratory (NMO-JPL) those circumstances under which the designees at Headquarters, Centers, or NMO-JPL may appropriately execute, amend, and terminate International Agreements. For Funded Agreements, the authority to execute, amend, and terminate may be delegated one level below the authorized official. Any such delegation of authority to execute, amend, and terminate Agreements must be in writing and indicate the extent of the delegation. The Mission Directorate Associate Administrators, the Officials-in-Charge of Headquarters Offices, the Assistant Administrator for External Relations, the Directors of NASA Centers, and the Manager of the NMO-JPL, within their area of jurisdiction, may delegate responsibility for selecting Agreement Managers to any NASA employee.

h. Nothing in this NPD shall affect the authority of the Assistant Administrator for Procurement concerning grants and cooperative agreements, as set forth in 14 CFR Part 1260, Grants and Cooperative Agreements, 14 CFR Part 1274, Cooperative Agreements with Commercial Firms, and NPR 5800.1, Grant and Cooperative Agreement Handbook.

## 6. DELEGATION OF AUTHORITY

None.

## 7. MEASUREMENTS

None.

## 8. CANCELLATION

NPD 1050.1G, Authority to Enter into Space Act Agreements, dated November 21, 2003.

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**/s/ Michael Griffin  
Administrator**

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**ATTACHMENT A: (TEXT)**

None.

**(URL for Graphic)**

None.

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